

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

MOTORS LIQUIDATION COMPANY, *et al.*,
f/k/a General Motors Corp., et al.

Debtors.

CHAPTER 11

NO. 09-50026

(Jointly Administered)

Hon. Robert E. Gerber

**STATE OF MICHIGAN JOINDER
IN TEXAS COMPTROLLER'S RESPONSE TO DEBTORS' MOTION
REGARDING ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

Now comes the Department of Treasury of the State of Michigan (Michigan Treasury) by and through its attorneys, Michael A. Cox, Attorney General, Julius Curling, Assistant Attorney General and Kathleen A. Gardiner, Assistant Attorney General and files its Joinder in Texas Comptroller's Response to Debtors' Motion Regarding Alternative Dispute Resolution Procedures. This Joinder is filed solely on behalf of the Department of Treasury of the State of Michigan and does not raise objections which other agencies of the State of Michigan may assert. The Department of Treasury of the State of Michigan joins in the Response filed by the State of Texas, Office of the Comptroller and further states:

1. Tax Claims of the Department of Treasury of the State of Michigan. The Department of Treasury of the State of Michigan has filed tax claims exceeding \$114 million in this case. Such claims are based substantially on state tax audits that are in various stages of completion.

2. Pending Audit Compliance Issues. There are outstanding audit compliance issues which require the cooperation of the debtor. Until such time as documents are provided it is impossible to enter into good faith negotiations.

3. No Clearly Demonstrated Need. The State does not deny the obvious benefits of alternative dispute resolution in many cases, but the debtor has not demonstrated the need for the process at this time. It would not be efficient or economical to force the process at a time when the debtor controls the flow of information and the parties would need to bargain on wholly speculative positions.

4. Considerable Costs to States. The States are in dire financial condition. There are employees and attorneys in place right now that have a demonstrated track record in quickly and economically fixing tax claims and negotiating payment in a timely and practical manner. Everyone involved clearly understands the limited economic resources available for litigation and ultimate payment of claims.

5. Conditioning of Alternative Dispute Resolution. At the very least, the imposition of alternative dispute resolution should await a certification by debtor of full tax discovery compliance on outstanding audits. In addition that certification should also require some elaboration of good faith efforts thereafter to settle claims. A maximum time period should be set for tax discovery completion and a sixty day minimum claims negotiation process should follow before the court considers alternative dispute resolution on a case-by-case basis.

6. Similarly to many states' tax laws, Michigan Tax Code MCL 205.20 *et seq* and MCL205.3(a) require taxpayers, including bankruptcy debtors, to cooperate with tax audits, including maintaining and providing to auditors business records necessary to conduct such audits.

7. An additional procedural issue with respect to pending tax audits is presented by the Debtor having requested administrative redetermination proceedings with respect to assessed tax audits. Debtor has requested informal conferences on tax assessments. Like all taxpayers, the Debtor has the right under Michigan law to contest audit assessments in administrative proceedings before an administrative law judge, with the further right to appeal any final order entered in such proceedings to state courts. The Debtor has invoked its administrative redetermination rights under Michigan law. The process outlined in the Claims Procedures Motion conflicts with the Debtor's existing redetermination requests. If the Debtor has decided it wishes to resolve the Michigan Department of Treasury's claims in federal court, either through the bankruptcy court claims process or through mediation at an appropriate time, the Debtor should withdraw its pending administrative redetermination requests.

WHEREUPON, the State of Michigan requests that (i) tax audit claims be carved out of the types of "designated claims" proposed in the Claims Procedures Motion, (ii) alternatively, implementation of mandatory mediation of tax audit claims be deferred until after the Debtors have complied with statutory requirements to provide documentation to auditors, (iii) if, contrary to the Michigan Department of Treasury's position, mandatory mediation is ordered, the Debtors be required to withdraw their pending administrative redetermination requests under state law, (iv) that the Debtor's Motion be denied and that any conflict with the Debtor regarding its tax claims be subject to the ordinary bankruptcy court claims process, following the completion of

tax audits in progress, and (v) the Michigan Department of Treasury shall have such other relief to which it may be entitled.

Respectfully submitted,

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